

Before the
Administrative Hearing Commission
State of Missouri



STATE BOARD OF NURSING,)	
)	
Petitioner,)	
)	
vs.)	No. 09-0276 BN
)	
LAURA WILSON,)	
)	
Respondent.)	

DECISION

The State Board of Nursing (“the Board”) has cause to discipline the registered nurse license of Laura Wilson.

Procedure

The Board filed its complaint on February 24, 2009. Wilson filed her answer on May 12, 2009. We held a hearing on August 16, 2013. Ian Hauptli represented the Board. Kyle Kleefuss, Law Offices of Derald L. Gab, P.C., represented Wilson. Because the parties waived post-hearing briefing, the case became ready for our decision on October 11, 2013, the date the transcript was filed.

At the hearing, the Board argued that Wilson failed to respond to its second request for admissions and that we should deem all of the requests as admitted. Wilson argues that she did respond to those requests. Our records show the Board filed its first request for admissions on November 15, 2012, and Wilson filed a certificate of service stating that she responded on

December 15, 2010. The Board filed its second request for admissions on December 21, 2010. Wilson did not file a certificate of service with us showing that she responded, as required by 1 CSR 15-3.420(2)(C),¹ and presented no other evidence showing that she responded. We find Wilson failed to answer the Board's second request for admissions and, therefore, deem them admitted. Mo.S.Ct.R. 59.01(a).²

Findings of Fact

1. Wilson was licensed by the Board as a registered nurse ("RN") on July 29, 2002, until her license expired on April 30, 2011. Her license was valid and active at all times relevant to these findings.

2. Wilson was employed as an RN at Supplemental Health Care ("Supplemental"), an agency that provides nurses to health care facilities on an as-needed basis, in St. Louis, Missouri.

3. Through Supplemental, Wilson worked as an RN at St. Louis University Hospital ("SLUH") from August 8 to September 1, 2005, and at Barnes-Jewish Hospital ("Barnes") from September 27, 2005 to November 30, 2005.

4. Also through Supplemental, Wilson worked as an RN for Home Advantage Home Health Care Services ("Home Advantage"), where she was assigned to care for C.H. and his wife, H.H., in their home.

5. Barnes, SLUH, and Home Advantage require nurses to document the administration of medications.

6. Both SLUH and Barnes used a Pyxis computerized medication dispensing unit. The Pyxis generates audit trails that detail the access or removal of controlled substances, including

¹ All references to "CSR" are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

² The Missouri Supreme Court Rules concerning discovery apply to cases before this Commission. 1 CSR 15-3.420(1).

the patient name, the doctor, the nurse, the date and time, and the medication removed, through the use of a private pass code issued to each nurse requiring access to Pyxis.

7. At both SLUH and Barnes, Wilson had a Pyxis pass code, and had knowledge of the proper policies and procedures designed to safeguard its privacy.

8. Whenever Wilson withdrew medication from the Pyxis, it recorded the removal, indicating that the medication was administered to the patient. If the medication was not administered to the patient, Wilson had a duty to record the medication as wasted.

9. Percocet is a trade name for a medication containing 325 mg of acetaminophen and 5 mg of oxycodone. Oxycodone is a Schedule II controlled substance under § 195.017.4(1)(a)n.

10. Vicodin is a trade name for a medication containing 500 mg of acetaminophen and 5 mg of hydrocodone. Hydrocodone is a Schedule II controlled substance under § 195.017.4(1)(a)j.

11. An audit of Pyxis records by the pharmacy at Barnes showed that between October 21 and November 11, 2006, Wilson's withdrawal of narcotics was more than double of any other nurse. A further investigation by Barnes revealed that the discrepancy was occasioned by Wilson withdrawing from the Pyxis multiple doses of oxycodone for a patient on multiple occasions in a day, in less than the prescribed dosing times. During this period, a total of 61 oxycodone tablets withdrawn by Wilson could not be accounted for.

12. Barnes staff also found multiple instances on November 29, 2005, where patients reported never having received pain medications that Wilson documented having withdrawn from the Pyxis and administered to them. In those instances, Wilson had, during an eight-hour shift, withdrawn enough pain medication to last a patient for an entire 24-hour period.

13. The following incidents occurred while Wilson was on duty as an RN at Barnes.

- a. D.S. was a patient at Barnes on November 27 and 28, 2005. Patient D.S. had a prescription for Percocet, two tablets every four hours, as needed for pain. On

November 27, 2005, Wilson removed two Percocet tablets for D.S. from the Pyxis at 11:29 p.m., and again at 3:50 a.m. on November 28, 2005. Wilson failed to document or complete a pain assessment to determine D.S.'s need for the medication.

- b. R.M. was a patient at Barnes on November 27 and 28, 2005. R.M. had a doctor's order for Percocet, two tablets every four hours as needed for pain. Wilson removed two tablets from the Pyxis for R.M. at 10:40 p.m. on November 27, 2005, and again at 11:26 p.m. on November 28, 2005, but failed to document the administration and/or waste of the medication. Wilson misappropriated the Percocet for her personal consumption.
- c. In November, 2005, Patient L.P. had a doctor's order for Percocet, two tablets every four hours as needed for pain. On November 26, 2005, and again on November 27, 2005, Wilson removed two Percocet tablets from the Pyxis for L.P., but failed to document the administration and/or waste of the medication. Instead, she misappropriated the Percocet for her personal consumption.
- d. On November 29, 2005, P.G., a patient at Barnes, had a doctor's order for Percocet, two tablets every four hours as needed for pain. On that date, Wilson removed two Percocet tablets for P.G. from the Pyxis system at 9:31 a.m., but failed to document the administration and/or waste of the medication. Five hours later, at 2:29 p.m., Wilson documented wasting the Percocet. At 2:42 p.m., Wilson again removed two Percocet tablets from the Pyxis system for P.G., but failed to document the administration and/or waste of the medication. Instead, Wilson misappropriated the Percocet for her personal consumption.

- e. On November 29, 2005, N.C., a patient at Barnes, had a doctor's order for Percocet, two tablets every four hours as needed for pain. At 9:32 a.m. that day, Wilson removed two Percocet tablets from the Pyxis system, but failed to document the administration and/or waste of the medication.

14. When Barnes staff confronted Wilson on November 29, 2005, about the discrepancies in her documenting the administration of controlled substances and her possible diversion of these medications, Wilson denied taking them for her personal use or to sell.

15. Wilson was dismissed from duty by Barnes on November 29, 2005.

16. The following incidents occurred while Wilson was on duty as an RN at SLUH:

- a. On August 2, 2005, Patient A died at SLUH. On September 2, 2005, Wilson removed two Vicodin tablets from the Pyxis system for Patient A at 1:33 a.m., 2:06 a.m., 2:41 a.m., 6:11 a.m., and again at 6:11 a.m., and misappropriated the Vicodin for her personal consumption.
- b. Patient B was a patient at SLUH on August 18, 2005. Patient B did not have a doctor's order for Percocet, and was not under Wilson's care. Without a doctor's order, Wilson removed two Percocet tablets from the Pyxis for Patient B at 11:09 p.m. on August 18, 2005, and failed to document the administration of the medication. Wilson misappropriated the Percocet for her personal consumption.
- c. Patient C was a patient at SLUH on August 18 and 19, 2005, and was not under Wilson's care. While on duty, Wilson removed two Percocet tablets from the Pyxis for Patient C at 11:36 p.m. on August 18, and two more tablets of Percocet, each at two different Pyxis access points, at 3:13 a.m. on August 19, 2005. Wilson failed to document the administration of this medication.

Wilson did not have or obtain a doctor's order for the Percocet, and misappropriated it for her personal consumption.

17. When confronted by her SLUH supervisor about the missing medications, Wilson denied having diverted them. Wilson resigned her position at SLUH.

18. On November 6, 2006, Wilson was on duty as an RN for Home Advantage in the home of C.H. On that day, C.H. had filled a doctor's prescription for 100 hydrocodone tablets, but had taken none of the tablets. C.H.'s wife, H.H., had a bottle of 120 hydrocodone tablets prescribed by her doctor.

19. Wilson removed C.H.'s entire bottle of 100 hydrocodone tablets, as well as H.H.'s bottle of 120 hydrocodone tablets from her patients' home. She had no valid prescription for the medications she took. Wilson took the hydrocodone for her personal use.

20. On November 7, 2006, after suffering from a fall and experiencing pain, C.H. realized his hydrocodone was missing. H.H.'s hydrocodone was also missing. The missing medication was reported to Home Advantage.

21. C.H.'s housekeeper contacted Wilson to inquire whether she knew what had happened to C.H.'s hydrocodone. Wilson denied knowing anything about the missing medication.

22. On the morning of November 7, Wilson contacted a co-worker. She admitted having removed C.H.'s medication from his home, and returned a bottle of 57 hydrocodone tablets. Wilson diverted 43 of C.H.'s hydrocodone for her personal consumption.

23. Wilson also admitted to her co-worker that she was addicted to narcotics, and had for the past two months misappropriated pain medications from a client's home. The co-worker advised Home Advantage of the conversation.

24. Later that day, Home Advantage terminated Wilson's employment for admission of theft of medications from a client, and for her admitted substance abuse and dependency. Home Advantage reported Wilson's termination to the Board that same date.

25. On November 22, 2006, and again on November 30, 2006, the Board's investigator interviewed Wilson. In the second interview, Wilson admitted she had misled the investigator in the first interview about having taken the entire bottle of C.H.'s medication.

26. On May 30, 2006, a criminal complaint was filed against Wilson in the Circuit Court of the City of St. Louis, charging her with theft/stealing a controlled substance, a Class C felony. An order of *nolle prosequi* was filed in the case on February 20, 2009, upon Wilson's successful completion of the Drug Court program.

Conclusions of Law

We have jurisdiction to hear the complaint.³ The Board has the burden of proving Wilson committed an act for which the law allows discipline.⁴ The Board argues there is cause for discipline under § 335.066.2:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit or license required by sections 335.011 to 335.096 or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

(1) Use or unlawful possession of any controlled substance, as defined in Chapter 195, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by sections 335.011 to 335.096;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions

³ Section 621.045. Statutory references, unless otherwise noted, are to the 2012 Supplement to the Revised Statutes of Missouri.

⁴ *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo.App. E.D. 1989).

or duties of any profession licensed or regulated by sections 335.011 to 335.096;

(12) Violation of any professional trust or confidence;

(14) Violation of the drug laws or rules and regulations of this state, any other state or the federal government[.]

Subsections (1) and (14) – Unlawful Drug

Possession and Unlawful Drug Use

Wilson diverted oxycodone and hydrocodone for her personal consumption. Section 195.202 provides:

Except as authorized by sections 195.005 to 195.425, it is unlawful for any person to possess or have under his control a controlled substance.

Wilson had no prescription or authorization to possess the controlled substances she diverted from SLUH, Barnes, and from C.H. and H.H. Her possession of these medications was therefore unlawful and in violation of § 195.202. We find cause to discipline her license under to § 335.066.2(1) and (14).

Subdivision (5) – Professional Standards and Honesty

Incompetency is a “state of being” showing that a professional is unable or unwilling to function properly in the profession.⁵ Misconduct means “the willful doing of an act with a wrongful intention[;] intentional wrongdoing.”⁶ Gross negligence is a deviation from professional standards so egregious that it demonstrates a conscious indifference to a professional duty.⁷ Fraud is an intentional perversion of truth to induce another, in reliance on it, to part with

⁵ *Albanna v. State Bd. of Reg’n for the Healing Arts*, 293 S.W.3d 423, 435 (Mo. 2009).

⁶ *Missouri Bd. for Arch’ts, Prof’l Eng’rs & Land Surv’rs v. Duncan*, No. AR-84-0239 (Mo. Admin. Hearing Comm’n Nov. 15, 1985) at 125, *aff’d*, 744 S.W.2d 524 (Mo.App. E.D. 1988).

⁷ *Id.* at 533.

some valuable thing belonging to him.⁸ It necessarily includes dishonesty, which is a lack of integrity or a disposition to defraud or deceive.⁹ Misrepresentation is a falsehood or untruth made with the intent and purpose of deceit.¹⁰

Because Wilson willfully and intentionally diverted controlled substances, we find misconduct. We find dishonesty because Wilson demonstrated a lack of integrity in diverting the drugs for her personal consumption. Wilson recorded some of pilfered medications as “wasted” when, in fact, she diverted them for her own use. She withdrew medications for a deceased patient. When her employers questioned her about the missing medications, she denied taking them, and concealed her untreated drug dependency. Wilson intentionally perverted the truth to escape detection, in order to deceive her employers into allowing her to continue in her position as an RN. Therefore, we find misrepresentation and fraud.

The Board presented no expert evidence about the standard of care applicable to RNs. Although such evidence has been determined to be necessary in some instances to establish gross negligence,¹¹ the applicable standard of care here is apparent from the very definition of professional nursing. Section 335.016(15) defines “professional nursing” as:

the performance for compensation of any act which requires substantial specialized education, judgment and skill based on knowledge and application of principles derived from the biological, physical, social and nursing sciences, including, but not limited to:

* * *

(c) The administration of medications and treatments as prescribed by a person licensed by a state regulatory board to prescribe medications and treatments[.]

⁸ *State ex rel. Williams v. Purl*, 128 S.W. 196, 201 (Mo. 1910).

⁹ MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 359 (11th ed. 2004).

¹⁰ *Id.* at 794.

¹¹ *State Bd. of Reg’n for the Healing Arts v. McDonagh*, 123 S.W.3d 146, 158 n. 16 (Mo. 2003); *Tendai v. Missouri State Bd. of Reg’n for the Healing Arts*, 161 S.W.3d 358, 367 (Mo. 2005), overruled on other grounds by *Albanna v. State Bd. of Reg’n for the Healing Arts*, 293 S.W.3d 423, 435 (Mo. 2009); *Kerwin v. Missouri Dental Board*, 375 S.W.3d 219 (Mo.App. W.D.2012). We recognize that the Missouri Supreme Court is currently considering whether expert testimony is necessary to prove gross negligence. *Luscombe v. Missouri State Board of Nursing*, no. SC93230 (Mo., argued Oct. 23, 2013).

Wilson failed in her duty to administer medications as prescribed when she misappropriated controlled substances from her employer and her home health care patients. Her theft of controlled substances for which she had no prescription reflects a complete disregard for the regulatory scheme governing the administration of such medications by law. Her diversion of medication from patients in her care evidences a callous indifference to their treatment and well-being. Wilson's conduct is so egregious a deviation from the professional standards of nursing, as defined in § 335.016(15), that it demonstrates a conscious indifference to her professional duty. We find gross negligence.

There is cause to discipline Wilson's license under § 335.066.2(5) for misconduct, misrepresentation, fraud, dishonesty, and gross negligence.

Subdivision (12) – Professional Trust or Confidence

The Board argues that Wilson violated a professional trust or confidence. Professional trust is reliance on the special knowledge and skills that professional licensure evidences.¹² It may exist not only between the professional and his clients, but also between the professional and his employer and colleagues.¹³ Employers and patients must have an assured reliance that RNs will not use their place of employment to divert controlled substances. Wilson repeatedly diverted controlled substances belonging to two hospitals and two patients. Wilson broke this assured reliance and violated professional trust. She is subject to discipline under § 335.066.2(12).

Wilson's Affirmative Defenses

Wilson contends the Board cannot seek to discipline her license because the State dismissed criminal charges against her. Wilson submitted a letter from the Circuit Attorney for the City of St. Louis showing that the criminal charges for theft of a controlled substance against her were dismissed.

¹² *Trieseler v. Helmbacher*, 168 S.W.2d 1030, 1036 (Mo. 1943).

¹³ *Cooper v. Missouri Bd. of Pharmacy*, 774 S.W.2d 501, 504 (Mo.App. E.D. 1989).

The dismissal of criminal charges does not bar the Board from seeking to discipline Wilson's license. The Missouri Supreme Court has held in a lawyer discipline action that "a criminal acquittal does not bar subsequent disciplinary action."¹⁴ The Missouri Supreme Court reached that same conclusion in a case involving the license of a doctor.¹⁵ If an acquittal does not bar disciplinary action, neither does the dismissal of charges. Moreover, any question of whether Wilson diverted controlled substances for her own use was resolved when she admitted that she did so, when she failed to either respond to the Board's second request for admissions, and when she failed to produce any evidence at the hearing to controvert them.

Wilson also argues she has rehabilitated herself by participation in drug court. Wilson's honesty in admitting her past issues with controlled substances, and her completion of the drug court program, are commendable. However, under § 335.066.2 and § 621.045, we have the authority only to determine whether there is cause to discipline Wilson's license. As it is the Board's role to decide what discipline to impose, we leave to its consideration Wilson's arguments about her rehabilitation.

Summary

There is cause to discipline Wilson's nursing license under §335.066.2(1), (5), (12), and (14).

SO ORDERED on November 6, 2013.

\s\ Mary E. Nelson
MARY E. NELSON
Commissioner

¹⁴ *In re Storumt*, 873 S.W.2d 227, 229-230 (Mo. banc 1994).

¹⁵ *Younge v. State Board of Registration for the Healing Arts*, 451 S.W.2d 346, 350 (Mo. 1969).